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TO RUEHC/SECSTATE WASHDC 9293
INFO RUEHBJ/AMEMBASSY BEIJING 3007
RUEHUL/AMEMBASSY SEOUL 9688
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RUEHGP/AMEMBASSY SINGAPORE 7471
RUEHJA/AMEMBASSY JAKARTA 4491
RUEHKL/AMEMBASSY KUALA LUMPUR 2025
RUEHLM/AMEMBASSY COLOMBO 0665
RUEHML/AMEMBASSY MANILA 1531
RUEHDO/AMEMBASSY DOHA 0304
RUEHFK/AMCONSUL FUKUOKA 8743
RUEHOK/AMCONSUL OSAKA KOBE 2559
RUEHNAG/AMCONSUL NAGOYA 5776
RUEHNH/AMCONSUL NAHA 1082
RUEHKS0/AMCONSUL SAPPORO 9237
RHMCSUU/DEPT OF ENERGY WASHINGTON DC
RUEHIN/AIT TAIPEI 7576
RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC
RHMFIUU/US CUSTOMS AND BORDER PROTECTION WASHINGTON DC

UNCLAS SECTION 01 OF 02 TOKYO 000257

SENSITIVE
SIPDIS

STATE FOR EAP/J
STATE PASS DOE FOR T. MUSTIN, W. KILMARTIN AND D. CHONG
DHS FOR C. BRZOZOWSKI AND M. MOONEY
CBP CONTAINER SECURITY INITIATIVE FOR D. STAJCAR

E.O. 12958: N/A
TAGS: [ETTC](#) [EWWT](#) [ENRG](#) [ELTN](#) [ETRD](#) [JA](#)
SUBJECT: MEGAPORTS: JAPAN SEEKS CLARIFICATION ON THIRD
COUNTRY CARGO INFORMATION-SHARING

REF: A. 09 STATE 64019
[1](#)B. 09 STATE 16717
[1](#)C. 09 TOKYO 638
[1](#)D. 09 TOKYO 468

[1](#)1. This is an action request. Please see paragraph 9.

[1](#)2. (SBU) Summary: The USG should explain how it will use container information on third country cargo shipments scanned by the Megaports Initiative pilot project in Yokohama, Ministry of Foreign Affairs (MOFA) and Ministry of Finance (MOF) Customs Bureau officials told emboffs February [1](#)1. Though aware that Megaports is a U.S. Department of Energy (DOE) program, the officials reiterated the GOJ's request to exchange cargo shipment information between Japanese and U.S. customs authorities under the Customs Mutual Assistance Agreement (CMAA), which governs cooperation between the Japanese Customs Administration (Japan Customs) and U.S. Customs and Border Protection (CBP). Under Japanese law, the officials explained, the CMAA is the only existing legal mechanism to share cargo shipment information with the United States; developing a separate agreement or mechanism would "take years," the officials asserted. End summary.

[1](#)3. (SBU) MOFA Second North America Division North American Affairs Bureau Official Kako Sasai and MOF Customs and Tariff Bureau Enforcement Division Deputy Director Atsushi Sakai asked to meet with emboffs from DOE, State, and CBP February 1 to discuss information-sharing issues related to the Megaports Initiative pilot project in Yokohama. Sakai claimed the GOJ had not initially expected the USG to request cargo information regarding third-country shipments, and Japan Customs in recent months has begun an internal review of this matter. Under Japanese law, personal information used by Japan Customs is kept confidential and can only be shared with other parties under the auspices of a legal instrument such as the CMAA, Sakai explained. Although the

GOJ understands that Megaports is administered by DOE, not CBP, the GOJ believes the CMAA is the only existing legal instrument that would allow information exchange with the USG; developing a separate agreement or mechanism would "take years."

¶4. (SBU) Sakai further explained Japan Customs is reviewing this issue in light of Japan's Customs Law Article 108-2, which states Japan Customs can share information with foreign customs authorities under the following three conditions (paraphrased):

--The foreign customs authority provides to Japan Customs the equivalent type of information as it requests from Japan Customs;

--The foreign customs authority maintains the same level of confidentiality as Japan Customs; and

--Information provided by Japan Customs is not used for anything other than its designated purpose.

¶5. (SBU) To determine whether information sharing on third country cargo under the Megaports Initiative would meet the conditions above, Sakai said, the GOJ requests responses to the four questions it posed to the USG in October 2009 during a Megaports delegation's visit to Tokyo. Sakai noted that the USG response to these questions listed below should come from CBP.

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--Question 1: How would CBP (and other relevant USG authorities) utilize information on containers bound for third party countries other than the U.S., especially in light of the scope specified in the CMAA?

--Question 2: Why does the USG (i.e., DOE) want to have container numbers?

--Question 3: How would information on containers bound for third party countries other than the United States assist Customs operations in the United States?

--Question 4: From a reciprocal viewpoint, if the USG detected anomalies in containers bound for third party countries other than Japan, could the USG provide the GOJ with equivalent information?

¶6. (SBU) Sakai said the GOJ wants to work with the USG to establish a legal justification to share third-country information and hopes the USG will answer the four questions above in an "appropriate" way to help make the case. In further urging the USG to respond to the aforementioned GOJ queries, Sakai cited CMAA Article 4(3)(b): "When the Customs Administration of either Party considers that available information may be relevant to serious customs offenses that could involve substantial damage to the economy, public health, public security, or any vital interest of the country of the other Customs Administration, the former Customs Administration shall, upon its own initiative, provide the latter Customs information with such information."

¶7. (SBU) Sakai suggested that, ideally, the USG's responses would explain how third country cargo shipment information would affect the U.S. economy or public security. Specifically, concrete examples of how this cargo information would assist "investigation, detection and/or prevention of serious offenses against U.S. customs laws" would help Sakai convince his superiors to accept a legal basis for information-sharing. (Note: Sakai also provided emboffs a written memorandum, which he emphasized reflected his "personal," not official, views. Post e-mailed the original memorandum separately to EAP/J, DOE and DHS/CBP. End note.)

¶8. (SBU) Comment: Although conceding that Megaports is a

DOE, not CBP, program, the GOJ continues to reiterate its desire that GOJ agencies discuss Megaports between "equivalent" U.S. counterparts (i.e., MOFA with State, Japan Customs with CBP, and MLIT with DOE). Although this attempt to structure GOJ bureaucratic engagement along its own familiar inter-agency lines poses challenges for Megaports implementation, the more serious concern may be the GOJ position that the CMAA is the only available legal mechanism for sharing information.

19. (U) Action Request: Post appreciates the Department's assistance in providing an inter-agency response to the GOJ's questions posed originally in October 2009. MOFA asks that the USG provide a consolidated response to all four questions in a single document.

ROOS